

REMARKS

Claims 1-16 are pending and under consideration in the above-identified application.

In the Office Action of October 13, 2009, claims 1-16 were rejected.

With this Amendment, claims 1, 7, 13 and 16 are amended.

I. 35 U.S.C. § 101 Rejection

Claims 7-12 were rejected under 35 U.S.C. § 101 for various informalities.

With this amendment, the specification is amended taking into consideration the Examiner's suggestions. Accordingly, the Applicant respectfully requests the withdrawal of this rejection.

II. 35 U.S.C. § 102 Anticipation Rejection of Claims

Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Arnold et al* (U.S. Pat. Pub. No. 2005/0165731) ("*Arnold*").

In relevant part, each of the independent claims 1, 7, 13 and 16 recite generating and executing diagnostic code based on the additional information to determine what optimization is required, and performing a second compiling of the portion of the program using the results generated from executing the diagnostic code.

This is clearly unlike *Arnold*, which fails to disclose or even fairly suggest generating and executing diagnostic code based on the additional information to determine what optimization is required, and performing a second compiling of the portion of the program using the results generated from executing the diagnostic code. Instead, *Arnold* discloses using statistical analysis to determine which methods to optimize to what level. Col. 14, l. 60-67. This cannot fairly be viewed as generating and executing diagnostic code and compiling the because *Arnold* merely performs a statistical analysis to determine which methods to optimize at what level.

Therefore, because *Arnold* fails to disclose or even fairly suggest every feature of claims 1, 7, 13 and 16, the rejection of claims 1, 7, 13 and 16 cannot stand.

Conclusion

In view of the above amendments and remarks, Applicant submits that all claims are clearly allowable over the cited prior art, and respectfully requests early and favorable notification to that effect.

Respectfully submitted,

Dated: January 13, 2010 ____By: /Timothy M Nitsch/_____
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